

# Notice of Allowability

Application No.

10/680,346

Examiner

Nyeemah Grazier

Applicant(s)

WALTER ET AL.

Art Unit

1626

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to November 21, 2005.
2. ☒ The allowed claim(s) is/are 1, 2, 5, 6, 10, 11 and 13.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |   |   |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.  |

**DETAILED ACTION**  
**NOTICE OF ALLOWANCE**

**I. ACTION SUMMARY**

The Amendments to the Claims and Remarks submitted to the Office on November 21, 2005 have been fully considered and will be the basis of the following Notice of Allowance.

Claims 1, 2, 5, 6, 10, 11, and 13 are currently pending. 3, 4, 7-9, 12 and 14 are cancelled. Claims 10, 11 and 13 have been rejoined. Claim 1 and 6 has been amended by Examiner's amendment.

**II. RESPONSE TO AMENDMENTS**

***A. Issue 1: Restriction***

Applicant's election with traverse of Group III, claims 1-9 in the reply filed on August 12, 2005 has been acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The requirement is still deemed proper and is therefore made FINAL.

***B. Issue 2: Obviousness Double Patenting Rejection***

Applicant's arguments, see Remarks, filed November 21, 2005, with respect to the obviousness double patenting rejection in light of co-pending application US 10/785,836 and 10/416,219 and US Patent 6,365,620 B2. Applicant's arguments have been fully considered and

the Terminal Disclaimer filed November 21, 2005 has been considered and approved. The obviousness-type double patenting rejection has been obviated.

***C. Issue 3: Objections***

Applicant's argument and amendments to the claims, filed on November 21, 2005, with respect to the objections have been fully considered. The objections have been obviated by the amendments.

**III. EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

**CLAIM 6:** Delete the period "." after "A4" and before "R<sub>1</sub> is"

Insert a semicolon ---;--- after "A4" and before "R<sub>1</sub> is"

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Rebecca Gegick, Esquire on January 19, 2006.

The application has been amended as follows:

**Claim 1:** Delete “orthosubstituted thiophenes” after “A is” and before the period “.” on page 2, line 10.

**Claim 1:** Insert ---a substituted thiophene ring--- after “A is” and before the period “.” at the end of the sentence on page 2, line 10.

#### **V. REASONS FOR ALLOWANCE**

The following is an examiner’s statement of reasons for allowance: The instant invention is drawn to compounds, compositions, preparation and the method of use of the compounds of formula (I). The instant invention has utility as a fungicide. The instant invention appears to be free of the art of record. The closest prior art reference of record is *Eicken et al.* US Patent 5,998,450 A, which teaches biphenyl amine derivatives useful as fungicides.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”


#### **VI. CONCLUSION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nyeemah Grazier whose telephone number is (571) 272-8781. The examiner can normally be reached on Monday through Thursday and every other Friday from 8:30 a.m. - 6:00 p.m.

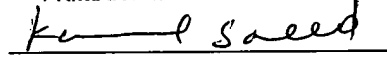
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (571) 272 - 0699. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Very truly yours,

  
**Nyeemah Grazier, Esq.**  
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